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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,813	09/25/2003	John A. Sulaver	SUL-100	8935
23843 7590 03/16/2007 FOOTHILL LAW GROUP 777 N. FIRST STREET, SUITE325 SAN JOSE, CA 95112			EXAMINER TRIEU, VAN THANH	
			ART UNIT	PAPER NUMBER
			2612	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/672,813

Applicant(s)

SULAVAR, JOHN A.

Examiner

Van T. Trieu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☒ Claim(s) 32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 3, 4, 8, 9, 11-16 and 21-32 are rejected under 35 U.S.C. 102(b) as being anticipated by **Peterson et al** [US 5,450,063].

Regarding claim 1, the claimed an alerting device, comprising: at least one motion detector (the transmitters 11 and receivers 12 and a video motion detectors 55 and 70, see Figs. 1 and 6, col. 4, lines 36-68 and col. 9, lines 49-59); and an announcement device with a prerecorded message (the speakers 15 and 40, see Figs. 3, 4 and 6, col. 5, lines 21-30 and col. 9, lines 24-32); and at least one light emitting device (the high intensity lights 16 and 41, see Figs. 1, 3, 4 and 6, col. 5, lines 31-42, col. 6, lines 42-51); and at least one warning replica (the replica of a falcon 37 and/or the mannequin 45, see Figs. 3 and 4); and the at least one warning sign (the flapping wings 37 or the rapidly rise and fall arms 45a of a person or mannequin 45, see Figs. 3 and 4, col. 6, lines 27-39 and col. 7, lines 1-9); and the at least one illumination means (the illumination of lights 45 and/or light 48, see Figs. 3, 4 and 6, col. 6, lines 40-57 and col. 7, lines 9-14); and the signal transmitting means operatively connecting the at least one motion sensor to the announcement device, to the at least one warning replica, to the at

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last one warning sign, to the illumination means (the detected/sensed signals are transmitted to the controller 60 and to each of the speakers, lights and falcon/mannequin, see Figs. 3, 4 and 6, col. 5, lines 1-9, col. 7, lines 43-49 and col. 9, lines 20-42); and the power source for supplying energy to the alerting device (the electrical power source, see col. 7, lines 49-53);

Regarding claim 3, the claimed at least one motion detector further comprises a timer (the timer 71, see Fig. 6, col. 3, lines 27-32 and col. 9, line 65).

Regarding claim 4, the claimed alerting device is portable (see Figs. 1, 3 and 4).

Regarding claim 8, all the claimed subject matters are cited in respect to claim 1 above, see col. 9, lines 24-32.

Regarding claim 9, all the claimed subject matters are cited in respect to claim 1 above, see col. 9, lines 24-32.

Regarding claim 11, the claimed motion detection is adjustable to illuminate the at least one warning replica under varying light conditions (the high intensity of illuminating light 48 is changed according to the no or low light conditions, see Fig. 4, col. 7, lines 8-14.

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Regarding claim 12, the claimed at least one warning replica is positioned in the space defined by the at least one warning sign (the replica falcon 36 and mannequin 45, see Figs. 3 and 4).

Regarding claim 13, the claimed at least one warning replica is positioned in the space beyond the space defined by the at least one warning sign (the replica falcon 36 and mannequin 45, see Figs. 3 and 4).

Regarding claim 14, all the claimed subject matters are cited in respect to claim 1 above, see Figs. 3 and 4.

Regarding claim 15, the claimed animal face or animal body comprises at least on face, head or body of a: dog, wolf, tiger, lion, leopard, cheetah, hyena and other vicious animal, which reads upon the replica falcon 36, see Fig. 3.

Regarding claim 16, the claimed animal face, animal profile, animal head, animal body further comprise a movable portion, the movable portion being capable of changing its position contemporaneously or sequentially with the prerecorded message (the moveable wings 37 with the recorded sounds, and/or arms 45a with the gun shot, see Figs. 3 and 4, col. 9, lines 20-37).

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Regarding claim 21, the claimed at least one warning replica is made of weather resistance material, see col. 7, lines 32-42.

Regarding claim 22, the claimed high density molded plastic (the plastic, see col. 7, lines 32-42).

Regarding claim 23, the claimed high density plastic is Telfon, which reads upon the plastic material see col. 7, lines 32-42.

Regarding claim 24, the claimed light emitting device is position in the interior of the at least one warning replica (the visor light 48, see Fig. 4).

Regarding claim 25, the claimed at least one light emitting device comprises ultraviolet, blue, yellow, orange, green and red colors (the light colors, see col. 5, lines 37-39 and col. 9, lines 32-35).

Regarding claim 26, the claimed at least one light emitting device is capable of intermittent operation (flashing strobe lights 16 and 41, see col. 9, lines 32-33).

Regarding claim 27, the claimed at least one motion detector, the announcement device, the warning replica and the at least one light emitting device are an integral unit, see Fig. 4.

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Regarding claim 28, the claimed at least one motion detector, the announcement device, the warning replica and the at least one light emitting device are not an integral unit, see Fig. 3.

Regarding claim 29, the claimed transmitting means comprises hard wiring, a fiber-optic connection or wireless transmission (hardwiring, see Fig. 6).

Regarding claim 30, the claimed warning sign warns of the presence of the same animal as the depiction (the falcon warning to warn birds, see Fig. 3).

Regarding claim 31, the claimed at least one warning sign warns of the presence of an animal different from the depiction (the replica person/mannequin 45 36 for warning birds, see Fig. 4).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Peterson et al** [US 5,450,063] in view of **Smith et al** [US 6,710,705].

Regarding claim 2, **Peterson et al** fails to disclose the manual on and off switch, the switch operatively connected to the alerting device. However, **Peterson et al** teaches that it should be understood the electronic arrangement for operating the electronic net 14 and platforms 17 and 19 are connected to a source of electrical power and to an electronically connected automated control arrangement to operate the electronic net. For providing this control function, FIG. 6 sets out a block flow schematic of the programmable logic controller 60, that is shown connected to components of the invention and to other optional components, see Figs. 3, 4 and 6, abstract, col. 7, lines 43-57. **Smith et al** suggests that an ultrasonic pest deterrence device 10 is electrically powered by either batteries 13 or line power 15. The power source can be automatically or manually selected with a switch 11, see Fig. 1, col. 3, lines 58-67. Therefore, an artisan would substitute the manual power switch of **Smith et al** for the automatically power the platforms and electronic net system of **Peterson et al** because the conventional manual power switch is well known in the art and it can serve as a backup power operation switch when the computer or programmable logic is not operated or failure, and it also provides immediately powering the system by a technician or owner by his/her desire.

3. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Peterson et al** [US 5,450,063] in view of **Baldwin et al** [US 5,971,597].

Regarding claim 5, **Peterson et al** fails to disclose at least one motion detector is a light beam motion detector. However, **Peterson et al** teaches that the microwave



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transmitters 11 and receivers 12 or 50 are used to detect of birds or animals passing the detected areas/zones 13, see Figs. 1 and 5, col. 4, lines 36-68. **Yu** suggests that the lighting fixture comprising an illumination device such as a light bulb, a motion detector, and an announcement device are assembled together within the body of the lighting fixture and formed integral parts of the lighting fixture. The motion detector is connected to power supply source. The lighting fixture can either be an outdoor or an indoor lighting fixture. The motion detector may comprise of an ultrasonic or infrared sensor. These sensors use changes in received ultrasonic or infrared energy to indicate movement of a person or an object such as a motor vehicle within an area monitored by the motion detector. The sensitivity of the infrared sensor can be adjusted to a level such that movements of small animals e.g. dog, cat etc. will not trigger the lighting fixture and announcement device, see Fig. 2, col. 2, lines 6-25. Therefore, an artisan would substitute either the IR or ultrasonic sensor of **Yu** for the microwave transmitter and receiver of **Peterson et al** for reducing and/or eliminating of electromagnetic interference with other radio electronic devices/equipment within the area while still providing effectively detecting motions of animals, birds and/or human intrusion.

Regarding claim 6, the claimed light beam motion detector is an infrared detector is met by the combination between **Peterson et al** and **Yu** in respect to claim 5 above.

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Regarding claim 7, the claimed at least one motion detector is an ultrasonic is met by the combination of the ultrasonic detector between **Peterson et al** and **Yu** in respect to claim 5 above.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Peterson et al** [US 5,450,063] in view of **Reich** [US 5,892,446].

Regarding claim 10, **Peterson et al** fails to disclose the power source comprises battery, solar power and household current. However, **Peterson et al** teaches that the bird avert system includes a power source for providing electrical power to the speakers, lights, motors and electronic circuits, see Fig. 6, col. 7, lines 49-53. **Reich** suggests that an animal deterrent device 100 include electronic circuits, light source 10, radio 12, IR heat and motion sensor 8 are electrically connected to a battery 2, solar panel 1, battery 2 and conventional household power source via plug 20, see Figs. 1-3, col. 3, lines 37-67 and col. 4, lines 1-13. Therefore, an artisan would substitute the battery, solar panel and household power sources of **Reich** for the power source of **Peterson et al** since the bird avert system can be use at any location near the housing or building and can be far away, thus, with all electrical power source options will provide convenience and greater flexibility of operating the system without restriction of electrical power sources.

5. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Peterson et al** [US 5,450,063].

Regarding claim 17, **Peterson et al** fails to disclose the moveable portion further comprises ears and jaw of an animal, the jaw being capable of opening and closing movements. However, **Peterson et al** teaches that the wings 37 of replica falcon 36 being flapping up and down to simulate the predatory bird noises, and/or the mannequin 45 to generate human sounds, see Figs. 3 and 4, col. 9, lines 2-32. Therefore, an artisan would recognize that it is a design choice to make the jaw of the mannequin to move according to the recorded human voice for scaring the birds.

Regarding claim 18, **Peterson et al** fails to disclose the jaw comprises at least one tooth and a tongue. However, according to the discussed of the mannequin's jaw of **Peterson et al** in respect to claim 17 above, it would have been obvious to an artisan to create the at least one tooth and a tongue for the mannequin for greater human look alike, which provides a greater effective of scaring the birds.

Regarding claim 19, **Peterson et al** fails to disclose the moveable portion is detachably connected to the at least one warning replica. However, **Peterson et al** teaches that the wings 37 of replica falcon 36 being flapping up and down to simulate the predatory bird noises, and/or the mannequin 45 to generate human sounds, see Figs. 3 and 4, col. 9, lines 2-32. Therefore, an artisan would recognize that either the wings and/or arms could be detached or disassembled from the falcon or mannequin since they are mechanical assembling for providing motions.

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Regarding claim 20, the claimed moveable portion is an integral part of the at least one warning replica, see Figs. 3 and 4.

### ***Response to Arguments***

6. Applicant's arguments filed on 27 December 2006, with respect to claims 1-32 have been partially considered and are persuasive. The rejection of claim 32 has been withdrawn.

#### **Applicant's arguments:**

(A) The invention allows the warning and the warning replica to be positioned next to each other or apart from each other, thus creating two separate warnings, and so further increasing the effect on the passer-by or the intruder." In addition, "... the warning sign may warn of one type of danger and the warning replica of an additional danger, thus further increasing the deterring effect. **Peterson's** flapping wings or arms simply do not constitute a "warning sign."

(B) **Peterson et al** clearly do not anticipate such an internal lighting feature.

(C) **Peterson et al** alert device is not portable.

(D) It is in fact not permissible to combine these references, there being no suggestion or motivation in the references to combine these fundamentally dissimilar references.

#### **Response to the arguments:**

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(A) The claimed limitations in particular claim 1 is so broad that met by the pest deterrence of **Peterson et al**. All the claims 1-32 do not claim of detecting/sensing a person/intruder and for warning that person/intruder being detected. The warning replica person/mannequin or falcon of **Peterson et al** meets all the alerting device limitations of claim 1.

(B) The lightings cited in claim 1 met the broad claimed of the at least one illumination device of claim 1.

(C) Examiner agrees that the pest deterrence device of **Peterson et al** is large and for use in a pond. However, the platforms replica person/mannequin and falcon can be moved to any different location as desired by a user to detect of animal intruders. Therefore, it reads upon the claim "portable device".

(D) It is obvious to combine those references because the type of sensors/detectors for detecting of motion, movement and/or vibrations is very well known in the art and available in the market. As well as the available power supplies such as battery, solar power and/or household power.

### ***Conclusion***

7. Claim 32 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


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8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from examiner should be directed to primary examiner **Van Trieu** whose telephone number is (571) 272-2972. The examiner can normally be reached on Mon-Fri from 7:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Mr. Daniel Wu** can be reached on (571) 272-2964.



**Van Trieu**  
**Primary Examiner**  
**Date: 3/6/07**